Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of	)	
	)	
STATE OF ALASKA	)	File Nos. 0001036496
	)	0001036497
Request For Waiver of Sections 2.102(c), 2.103(a)	)	0001039631
90.20, and 90.173(c) of the Commission's Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 7, 2003 **Released: August 7, 2003**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address a Request for Waiver of the Commission's Rules (Waiver Request) associated with each of the three captioned applications of the State of Alaska ("Alaska" or "the State").[1] The Waiver Request seeks to allow (a) the use of non-standard channel centers within the 154.65-156.24 MHz "sub-band" of the VHF Public Safety Pool, and (b) non-Federal Government use of Federal Government spectrum, and vice versa, for intra-agency public safety operations.[2] Given a shared frequency usage agreement, the proposed system represents a unique partnership between the federal, state and local governments and is likely to be the first statewide, multi-agency, multi-jurisdiction public safety VHF trunking system in the United States. While there has been shared frequency use of common channels by federal, state, and local entities for interoperability[3] in the past, we believe that this proposed system is the first of its kind wherein an entire system is specifically dedicated to the sharing of VHF Federal and non-Federal spectrum by federal, state, and local public safety entities *statewide*. Granting the Waiver Request promotes the Commission's Homeland Security objectives[4] and comports with the overall spectrum utilization goals as outlined in the Spectrum Policy

[1] *See* FCC File Nos. 0001036496 and 0001036497 (filed Sept. 23, 2002), and 0001039631 (filed Sept. 25, 2002) (Alaska Applications), as amended, and associated Waiver-Expedited Action Requested (Waiver Request). The FCC Reference Information Center also has maintained a public file related to the instant proceeding under file number "DA 02-3495" (the publication number of the public notice that requested comments on the Waiver Request). *See* note 46, *infra*.

[2] *See* Waiver Request at 2-4.

[3] "Interoperability" is defined as "[a]n essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results." 47 C.F.R. § 90.7.

[4] To fully and effectively carry out its role in promoting homeland security, network protection, interoperability, redundancy, and reliability, the FCC has established objectives including the following: "[d]evelop policies that promote access to effective communications services by public safety, public health, and other emergency and defense personnel in emergency situations." *See FCC Strategic Plan FY 2003-FY2008,* Goal 5 - Homeland Security.

Task Force Report.[5] Based on the record of the instant proceeding, we conclude that the Waiver Request associated with the captioned applications should be granted as set forth below.

II. BACKGROUND

2. In Alaska, given the state's remote location, vast land mass, and sparse population, federal, state and local governments rely more on mutual assistance than is the case in the contiguous forty-eight states.[6] Specifically, the State notes that the military plays a defining and critical role in providing support to civil authorities' first response and sustained recovery operations, and that Alaskan communities rely heavily on federal government assistance.[7] In addition, the State points out that twenty percent of the nation's oil production, and critical U.S. Department of Defense (DoD) installations are located in Alaska, which further drives the need for federal, state and local partnerships among public safety entities to provide the public assistance and response required to ensure public safety and security.[8] To address land mobile radio communication needs, a cooperative partnership of federal, state and local government entities formed the Alaska Land Mobile Radio Executive Council (Council).

3. *ALMR Executive Council.* The Council is open to all federal, state and municipal governmental agencies[9] and administered by four equal "co-chairs" or "voting members" who are appointed by (and must be empowered to bind and vote for) one of the following groups: federal DoD, federal non-DoD,[10] the State of Alaska, and the Alaska Municipal League (129 cities and 14 boroughs).[11] Under the direction of the Council, a cooperative partnership of federal, state and local government entities initiated the Alaska Land Mobile Radio Project (ALMR), which explored various methods to

[5] *See, e.g., Spectrum Policy Task Force Report*, ET Docket No. 02-135 at 15 (Nov. 2002) ("it is important that the Commission continue to optimize and facilitate access to and use of the radio spectrum").

[6] Waiver Request at 12.

[7] *Id.*

[8] *Id.*

[9] *See* Charter For The Alaska-Wide Land Mobile Radio Executive Council, 10 April 2003 (ALMR Charter), Art. III. In 1995 the U.S. Department of Defense's (DoD) Alaskan Command office formed the ALMR Executive Council to administer narrowband migration issues for federal land mobile radio service. *See, e.g.,* White Paper on Alaska Land Mobile Radio Trunked System, *A Technical Approach to Utilizing NTIA and FCC Spectrum in a Shared Trunk Radio System*, dated May 17, 2002 (White Paper) at ii. However, in 1997 the Council amended its charter to extend membership to state and local government public safety first responders to correct significant shortfalls in interoperability between federal, state and local agencies. *See* ALMR Charter, Art. I. In April 2003, the Council again amended its charter to address the April 2001 MOA, *see* note 17, *infra*, between federal, state and local government agencies to implement a cost shared, single statewide Project 25 (ANSI/TIA 102-A) standards based trunked and conventional based radio infrastructure. "This charter represents a consortium approach to governance of the implementation, operation, maintenance and management of the shared trunked and conventional land mobile radio infrastructure." *Id.* at Art. I.

[10] Federal DoD represents the U.S. Air Force, U.S. Army, U.S. Navy, and U.S. Marine Corps; federal non-DoD represents all other federal agencies operating within Alaska, to include Alaska Tribal Governments and/or entities. *See* April 2003 Interoperability Plan for the State of Alaska (Interoperability Plan), at 4, enclosed with Letter to Jeanne Kowalski, FCC, from Robert M. Halperin, Esq., (dated April 22, 2003) (April 2003 Letter).

[11] *See* ALMR Charter, Art. III; Interoperability Plan at 3. The Alaska Municipal League describes itself as a "voluntary, nonprofit, nonpartisan, statewide organization of over 140 cities, boroughs, and unified municipalities in Alaska, representing over 98 percent of Alaskan residents." *See* http://www.akml.org/.

resolve interoperability[12] and other communications difficulties facing federal, state and local public safety entities in Alaska.[13]

4. To meet the partnership's unique spectrum needs, Alaska states that the Council reviewed three primary solutions: (1) create two independent trunked systems (*i.e.*, use existing trunked systems and implement new trunked systems without regard to a common interface standard); (2) implement a dual site system (*i.e.*, implement independent new systems using a common air interface standard, share site locations and tail circuits, use a segregated Federal channel plan and a segregated non-Federal spectrum plan); and (3) create one single shared infrastructure trunked very high frequency (VHF) band system, where state and federal users would share all repeaters, RF sites, towers, dispatches, and tail circuits.[14] The Council concluded that the third solution, a single shared infrastructure trunked system, would best meet the need for cost effective, spectrum efficient, and interoperable public safety radio communications.[15] Consequently, local, state and federal government agencies have worked together to implement a single, shared infrastructure wide-area trunked radio system in Alaska.[16] Federal, state, and municipal agencies identified and agreed upon a common migration solution and signed a Memorandum of Agreement (MOA), in April, 2001, to implement and operate the proposed system.[17]

5. *The Proposed System* (ALMR). Alaska states that the proposed radio system would be available to all federal, state and local public safety entities in Alaska, which would share the communications infrastructure of the system and associated costs.[18] Implementation of the ALMR system would occur in five phases ("Phases 0-4"), over a projected five-year period, and the system would

[12] Alaska defines "interoperability" as the ability of different governmental agencies to communicate across jurisdictions and with each other. Waiver Request at 10 n.19 *citing* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements through the Year 2010, *First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd 152 (1998). We note that Alaska's definition is generally consistent with the Commission's definition of interoperability. *See* note 3, supra.

[13] *See* White Paper at ii.

[14] *See* Waiver Request at 16-18.

[15] *Id.* at 18-19.

[16] Letter to FCC from Dean Strid, Communications Engineer, Alaska Department of Administration (dated May 20, 2002) ("Alaska DoA Letter"), included with each captioned application and Waiver Request. Federal, state and local agencies have partnered "to implement a shared, state-wide, wide area trunked radio infrastructure providing a full featured on-demand and in real-time interoperability between state, local and federal local first responders as well as a fiscally sound cost shared solution for day-to-day intra-agency communications through the use of a shared trunked radio technology and infrastructure." Waiver Request at 12.

[17] *See* Memorandum of Agreement signed by: Fran Ulmer, Lt. Governor, State of Alaska; Norton A. Schwartz, Lieutenant General, USAF, Commander, Alaskan Command; Douglas A. Robinson for Willie Thomas, President, Alaska Municipal League; and Jeffrey B. Staser, President, Federal Executive Association (dated April 4, 2001) (MOA) at 2. The MOA represents the cooperation and commitment of the aforementioned agencies "to move forward within the constraints of law, funding and the will of each agency to achieve a mutually burden shared backbone communication infrastructure that is responsive to the needs of the participating federal, state and municipal agencies for mutual aid, disaster response and crisis management missions as well as day-to-day operations." *Id*. at 1-2.

[18] Waiver Request at 11-12, ALMR Charter, Art. III, note 9 and accompanying text, *supra*. *See also* ALMR Charter, Art. IV ("A Memorandum of Agreement or Memorandum of Understanding (MOA or MOU) or Cooperative Agreement shall be executed between each applicable member agency and shall specify the terms and conditions for participation, resource sharing and utilization for the various stages of implementation.").

consist of a total of 354 repeaters at 87 sites.[19] The proposed system, which would utilize Project 25 digital technology,[20] would pair approximately 1.5 megahertz of non-Federal Public Safety Pool spectrum in the 154.65–156.24 MHz "sub-band" with an equal amount of Federal Government spectrum in the 138-144 MHz band, to create a narrowband (12.5 kHz operations) radio system of one-hundred ten (110) channel pairs, including eighteen (18) to twenty (20) frequencies reserved for expansion.[21] The non-Federal Public Safety Pool spectrum would be used for base stations while the Federal frequencies would be used for mobile units.[22] All entities using the system would have access to all spectrum employed in the system for daily intra-agency use as well as inter-agency interoperability use during cross-jurisdictional, mutual aid, and task force incidents involving two or more participating federal, state, and local public safety entities.[23] The ALMR system would also facilitate backwards compatibility to legacy conventional and trunked systems as well as interface to maritime and air ground assets involved in emergency response.[24] Alaska states that Congress has appropriated $15 million in Fiscal Year 2003 funding for implementation of the ALMR system.[25]

6. Alaska asserts that the proposed ALMR system is in the best interest of its citizens,[26] and is both the most spectrally and cost efficient solution to the needs of Federal and non-Federal first responders.[27] Alaska states that the cooperative partnership of state, local and federal public safety entities expended nearly one million dollars in exploring solutions to its communications shortfalls and devising the proposed system of shared equipment and costs for the purpose of enhancing interoperability, increasing operational flexibility and decreasing costs for public safety first responders.[28] Further, Alaska asserts that the proposed system promotes effective public safety communications and enables the entities sharing the system to communicate with one another both on a day-to-day basis and

[19] White Paper at 1.

[20] Alaska states that the ALMR system would be the first Project 25 VHF voice over IP trunked radio system. Alaska further states that it has been contacted by manufacturers of Project 25 equipment to request permission to test new Project 25 trunked VHF radio equipment on the ALMR system. April 2003 Letter at 2.

[21] Waiver Request at 11. Many of the base stations on the non-Federal Public Safety Pool spectrum in the 154.65–156.24 MHz "sub-band" would utilize non-standard channel centers. *Id.* at 4. We note, however, that in the Memorandum of Agreement between DoD and Alaska filed on July 28, 2003, the channel plan has 120 channel pairs. See footnote 52.

[22] *Id.*

[23] Alaska states that waiver of the equipment certification rules is not required to grant the captioned applications because the proposed equipment is certified for the proposed frequencies of operation. Alaska Response at 6 (the site repeater equipment number is ABZ89C3773 (federal number is JF12/07140), the portable radio number is AZ489FT3804 (federal number is JF12/08040), the mobile radio number is AZ492FT377 (federal number is JF12/07139), and the consolette federal number is JF12/07854).

[24] Interoperability Plan at 6. Alaska states that existing dispatch consoles have connectivity into existing conventional and trunked radio repeater systems. Thus, connecting existing dispatch consoles into the P25 trunked system allows for cross patching between non-P25 trunked and conventional systems. Interoperability Plan at 9.

[25] April 2003 Letter at 3.

[26] Waiver Request at 11.

[27] *See* April 2003 Letter at 2.

[28] Waiver Request at 11-12.

during emergencies.[29] Alaska also notes that a shared system facilitates secure communications between state, local and federal agencies engaged in homeland defense and security task force missions, which have become a priority for all public safety entities in the State of Alaska.

7. *Captioned applications*. On September 23 and 25, 2002, Alaska filed the captioned applications for authorization to conduct exclusive ("FB8/MO8") trunked operations on numerous frequencies within the VHF Public Safety Pool.[30] The captioned applications are three of a total of fifteen applications that the State anticipates filing in connection with the ALMR system.[31] Alaska explains that the captioned applications seek authority for selected sites within Phases 0-2 that are in more populated areas of the state, given that more users in these areas require frequencies and because more incumbents in these areas had to be accommodated.[32] According to Alaska, the eighteen sites requested in the captioned applications represent the bulk of the spectrum resource that will be used in the whole system, *i.e.,* ninety percent of the spectrum resources requested in the captioned applications will be reused throughout the ALMR system statewide.[33]

8. *Request for Waiver of Sections 2.102(c), 90.173(c), and 2.103(a)*. The Waiver Request associated with each of the captioned applications seeks waiver of Sections 2.102(c),[34] 90.173(c),[35] and 2.103(a)[36] of the Commission's Rules so that non-Federal entities may utilize the Federal Government spectrum associated with the proposed system, and vice versa, for day-to-day intra-agency communications.[37] Grant of the captioned applications requires waivers because these rules restrict non-

[29] April 2003 Letter at 3.

[30] *See generally* Alaska Applications.

[31] *See, e.g.,* FCC File No. 0001036496, Letter to Jeanne Kowalski, Deputy Chief, Public Safety and Private Wireless Division, WTB, FCC, from Robert M. Halperin, Esq., Counsel for State of Alaska (dated June 30, 2003) (June 2003 Letter). Attached to the June 2003 Letter is Alaska's response to ten questions related to the captioned applications (Alaska Response). The three pending applications cover eighteen sites: three of the four sites in "Phase 0," ten of the twenty-four sites in "Phase 1," and five of the forty-two sites in "Phase 2." Alaska Response at 4-5.

[32] See Alaska Response at 4-5.

[33] *Id.*

[34] 47 C.F.R. §§ 2.102(c). Section 2.102(c) states, in relevant part: "Non-Government stations may be authorized to use Government frequencies in the bands above 25 MHz if the Commission finds, after consultations with the appropriate Government agency or agencies, that such use is necessary for coordination of Government and non-Government activities . . . ."

[35] 47 C.F.R. § 90.173(c). Section 90.173(c) provides: "Frequencies allocated for Federal Government radio stations under Executive order of the President may be authorized for the use of stations in these services upon appropriate showing by the applicant that such assignment is necessary for inter-communication with government stations or required for coordination with activities of the Federal Government, and where the Commission finds, after consultation with the appropriate government agency or agencies, that such assignment is necessary."

[36] 47 C.F.R. §§ 2.103(a) (Government use of non-Government frequencies). Section 2.103(a) states, in relevant part: "Government stations may be authorized to use non-Government frequencies in the bands above 25 MHz . . . if the Commission finds that such use is necessary for coordination of Government and non-Government activities . . . ."

[37] Alaska's proposal would result in the following: (1) Non-Government day-to-day intra-agency operation on Government spectrum for portable and mobile subscribers operating on the joint-use trunk radio infrastructure in the VHF Public Safety Pool; (2) Government day-to-day intra-agency operation would occur on non-Government radio frequencies used for base repeaters; and (3) Non-Government and Government frequency resources as paired would be used for day-to-day intra-agency communications as well as cross jurisdictional inter-agency communications by both

Federal Government use of Federal Government spectrum, and vice versa, to scenarios involving coordination of Federal and non-Federal activities.[38] Inasmuch as Alaska seeks to use the subject Governmental frequencies for all of its public safety communications, regardless of whether the use involves coordinating or communicating with a Governmental entity, Alaska requires and seeks a waiver of both Sections 2.102(c) and 90.173(c) to implement its proposed system.[39] Similarly, waiver of Section 2.103(a) is requested and required, as a policy matter, because the Federal use of non-Federal Government frequencies would include intra-agency communications.

9. *Request for waiver of Section 90.20*. The proposed ALMR system pairs VHF Public Safety Pool spectrum, which has channel centers spaced every 7.5 kHz, with Federal spectrum, which has channel centers spaced every 12.5 kHz. In this connection, Alaska requests a waiver of Section 90.20(c)(3) of the Commission's Rules[40] because the captioned applications request authority to operate a number of base stations on Public Safety Pool spectrum using non-standard frequency centers that are offset +/– 2.5 kHz from standard center frequencies set in the rule.[41] Alaska also seeks a waiver because Section 90.20(c)(3) designates certain frequencies for mobile use that Alaska seeks to use for base stations.[42] Additionally, Alaska requests waiver of certain limitations set forth in Section 90.20(d) of the Commission's Rules[43] that designate certain frequencies for specific users. Because the channels are trunked, the ALMR system would not isolate these frequencies for specific users; rather, it would give all users on the ALMR system access to all frequencies on the system. Thus, Alaska also requests a waiver of certain limitations delineated therein as to frequencies requested in the captioned applications that are governed by: a) Limitation 16**,** which reserves certain frequencies for state police agencies; b) Limitation 41, which reserves applicable frequencies for police emergency communications; and c) Limitation 43, which reserves applicable frequencies for non-State highway maintenance radio systems.[44] We note that a

non-Government and Government entities operating on the shared joint-use trunk radio infrastructure. Waiver Request at 2. Reciprocal licensing authorizations for the partnering Federal government entities are being requested through the National Telecommunications and Information Administration (NTIA). *Id.*

[38] The Waiver Request did not specifically request waiver of 47 C.F.R. § 2.103(a). Nonetheless, we deem the Waiver Request to include Section 2.103(a) given the proposal to allow Federal use of non-Federal spectrum for intra-agency communication. *See e.g*., note 37, *supra*.

[39] Waiver Request at 1.

[40] 47 C.F.R. § 90.20(c)(3).

[41] Section 90.20(c)(3) sets forth the radio frequency allocation for non-government Public Safety Pool use. Alaska provides a table (Table 1-1 "Public Safety Pool frequencies in the 154.65 – 156.24 sub-band") and explanation representing the sub-band of the Public Safety Pool frequencies for which Alaska requests permission to operate on 12.5 kHz channel spacing and employing occupied emission bandwidths of 8K10F1E, 10K0F2D, and 11K0F2D. Alaska delineates frequencies which are part of the spectrum plan for ALMR five-phase implementation and include spectrum for growth (*i.e.*, those targeted to facilitate growth of the system as local communities and municipalities migrate onto the system), frequencies which will be used as currently channeled by the FCC without alteration, and frequencies the channel centers of which would be adjusted up or down by 2.5 kHz. *See* Waiver Request, at 3-7. Specifically, 29 of the 90 channels in the 154.65 – 156.24 MHz sub-band require no change in center frequency; thirty channels require adding 2.5 kHz to the standard center frequency to achieve channels spaced every 12.5 kHz, and thirty-one channels require subtracting 2.5 kHz from the standard center frequency to achieve 12.5 kHz spacing. *See, e.g.*, White Paper at 2.

[42] Waiver Request at 8.

[43] 47 C.F.R. § 90.20(d).

[44] *See* Waiver Request at 9 quoting 47 C.F.R. §§ 90.20(d)(16),(41),(43). Attached to the Waiver Request is a letter from the State of Alaska Department of Public Safety, providing concurrence for Alaska's proposal to use certain frequencies

waiver of Limitation 43 is no longer needed because the Commission deleted this provision after the Waiver Request was filed.[45]

10. On December 20, 2002, the Wireless Telecommunications Bureau's (WTB) Public Safety and Private Wireless Division (PSPWD) released a *Public Notice* seeking comment on Alaska's Waiver Request.[46] All parties that filed comments in response to the *Public Notice* support Alaska's Waiver Request.[47] In February, 2003, PSPWD requested that Alaska file a State Interoperability Plan. In response, on April 22, 2003, Alaska submitted its Interoperability Plan.[48] On May 21, 2003, PSPWD's Licensing and Technical Analysis Branch granted Alaska Special Temporary Authority (STA) to construct and operate several sites of the ALMR system.[49] On June 25, 2003, PSPWD requested additional information on Alaska's captioned applications, including several questions related to Section 90.187.[50] On June 30, 2003, Alaska submitted a response to PSPWD's request for additional information,[51] and a Memorandum of Agreement between DoD and Alaska was filed on July 28, 2003.[52]

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designated for state police radio systems, and a letter from the American Association of State Highway and Transportation Officials ("AASHTO"), the FCC-certified coordinator of frequencies within the former Highway Maintenance Radio Service, concurring with the use of certain frequencies limited to use in highway maintenance systems. *See* Letter to FCC from Del Smith, Deputy Commissioner, Department of Public Safety (dated May 17, 2002) at Waiver Request, Attach. 2; and Letter to FCC from Dean Strid, AASHTO Coordinator, Alaska (dated May 17, 2002) at Waiver Request, Attach. 3.

[45] *See* 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, WT Docket No. 98-182, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9830 (2002) (corrected by *Erratum*, 17 FCC Rcd 16876 (WTB PSPWD 2002 (deleted and reserved 47 C.F.R. § 90.20(d)(43)).

[46] Wireless Telecommunications Bureau Seeks Comment On Requests For Waivers By The State Of Alaska To Allow Wide-Area Joint Federal/Non-Federal Interoperable VHF Mobile Radio System, *Public Notice*, 17 FCC Rcd 25310 (WTB PSPWD 2002) (*Public Notice*).

[47] Comments were filed by Alaska Association of Chiefs of Police; Alaska Federation of Natives, Inc.; Alaska Fire Chief's Association; Alaska Land Mobile Radio Executive Council; Association of Public-Safety Communications Officials-International, Inc.; Municipality of Anchorage Communications Division; Municipality of Anchorage Traffic Department; National Law Enforcement and Corrections Technology Center – Northwest; North Slope Borough Police Department; Public Safety Wireless Network Program; U.S. Department of Justice; and Wasilla Police Department. Reply Comments were filed by Alaska.

[48] *See* April 2003 Letter and Interoperability Plan. These filings were also accompanied by an Incident Command System Report, a description of Alaska's sharing arrangement with the DoD, and the Council's Charter. *See* Attachments to April 2003 Letter.

[49] The STA grants Alaska authority, under call sign WPXQ663, to operate a subset (reduced number of frequencies at sites) of the "Phase 0" sites as proposed in Alaska's Applications, and one "Phase 1" site. Alaska asserts that the STA has permitted some system data collection and development to proceed during summer months. Alaska Response at 5.

[50] *See, e.g.,* FCC File No. 0001036496, Electronic Mail Message from Jeanne Kowalski, FCC, to Robert M. Halperin, Esq., Counsel for State of Alaska (June 25, 2003).

[51] *See generally* Alaska Response. The response also included four letters of consent provided by affected licensees and, for each application, a spreadsheet detailing the frequency coordination analysis by frequency range ("APCO Reports").

[52] *See* FCC File No. DA 02-3495, Memorandum of Agreement between the Assistant Secretary of Defense for Networks and Information Integration and Commissioner, Public Safety, State of Alaska, dated July 25, 2003 (July 2003 MOA), attached to Electronic Mail Message from Lori A. Poppenhager, U.S. Army FAS Representative, to Jeanne Kowalski, FCC, dated July 28, 2003 (July 2003 Letter).

III. DISCUSSION

11. The Commission is responsible for the licensing of radio frequencies to non-Government entities[53] and the National Telecommunications and Information Administration (NTIA) is responsible for the licensing of radio frequencies to Government departments and agencies.[54] The Inter-Department Radio Advisory Committee (IRAC) advises the NTIA in assigning frequencies to U.S. Government radio stations and in developing and executing policies, programs, procedures, and technical criteria pertaining to the allocation, management, and use of the spectrum.[55] Approximately half of the frequencies requested in the captioned applications are within the 138-144 MHz band that is allocated exclusively for Federal Government stations.[56] The other half of the frequencies requested are within the 154.65-156.2475 MHz band that is allocated exclusively for non-Federal Government stations.[57] By way of clarification, our grants of authority herein related to non-Federal Government use of Federal Government spectrum are made subject to the condition that NTIA has approved this non-Federal Government use as a policy matter.[58] In addition, our grant of rule waivers related to Federal Government use of non-Federal Government spectrum is subject to the condition that any Federal Government entity that uses the non-Federal Government spectrum must be authorized to do so by NTIA.[59]

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[53] 47 C.F.R. § 2.106 contains the United States Table of Allocations. Columns 4 through 7 are divided into the Government Table of Frequency Allocation and the Non-Government Table of Frequency Allocations. The Government plan (shown in column 4) is administered by the NTIA, and the non-Government plan (shown in column 5) is administered by the FCC. *See* 47 C.F.R. § 2.105. "Non-Government" means an entity which is not a Federal entity. Thus, for example, Alaska is deemed a non-Government entity because it is not a Federal entity.

[54] The NTIA serves as the principal adviser to the President, Vice President, and Secretary of Commerce on domestic and international communications and information issues and represents the Executive Branch before Congress, other Federal agencies, foreign governments and international organizations. In addition to authority over bands that include Federal allocations, NTIA is also charged with managing all Federal government use of radio spectrum regardless of the band involved. *See First Report and Order,* 14 FCC Rcd at 184 ¶ 62 (*citing* 47 U.S.C. § 305; 47 U.S.C. §§ 901-904 (NTIA Organization Act)). Section 305 of the Act grants NTIA exclusive authority over "radio stations belonging to and operated by the United States" and requires these stations to use frequencies assigned by NTIA. *See also Federal Spectrum Management Processes Report*, Public Safety Wireless Network, at 3-8 (September 1998). Thus, federal entities cannot lawfully use FCC-administered non-Federal Government spectrum without NTIA approval in its capacity of overseer and policy manager of all Federal use of radio spectrum. *See* NTIA Manual §§ 2.1-2.3 Telecommunications Policy).

[55] The IRAC consists of a representative appointed by each of approximately 20 member Federal departments and agencies together with such other departments and agencies as NTIA might designate. The IRAC's substructure consists of the Frequency Assignment Subcommittee (FAS), the Spectrum Planning Subcommittee (SPS), the Technical Subcommittee, the Radio Conference Subcommittee, Emergency Planning Subcommittee, the International Notification Group, and a number of *ad hoc* working groups. Liaison between the IRAC and the FCC is effected by a representative appointed by the FCC to serve in that capacity.

[56] *See* 47 C.F.R. § 2.106.

[57] *Id.*

[58] The record before us reflects that "the system will be presented at the August SPS for NTIA system certification." July 2003 Letter at 1.

[59] *See generally* July 2003 MOA. Among other things, "[t]he signed MOA completes the DoD waiver requirements for the system." *See* July 2003 Letter at 1. *See also* Interoperability Plan, Appendix D (Sharing Agreement dated April 10, 2003).

12. Pursuant to Section 1.925 of the Commission's Rules, Alaska may obtain a waiver of Sections 2.102(c), 90.173(c), and 90.20(c)(3) of the Commission's Rules if it demonstrates that: (1) the underlying purpose of the rules would not be served or would be frustrated by application to the instant case and that grant of the requested waivers would be in the public interest; or (2) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest or no reasonable alternative exists.[60] Based on our review of the record, including the additional information submitted in response to PSPWD's recent request, and the public comments filed in response to PSPWD's Public Notice, we conclude that Alaska's Waiver Request satisfies all the requirements set forth in Section 1.925.[61] We discuss the reasons for our decision more fully below.

13. *Underlying Purpose of the Rules*. Sections 2.102(c), 90.173(c)(3), and 2.103(a) serve the important function of facilitating Federal to non-Federal interoperability, by requiring a finding that the proposed non-Federal use of Federal spectrum, and vice versa, is necessary for coordination of Government and non-Government activities. In this case, however, we agree with Alaska that granting the Waiver Request will not undermine the purpose of these rules because the captioned applications propose to pair Federal and non-Federal spectrum to facilitate repeater operations for a trunked, joint Federal and non-Federal shared use infrastructure.[62] Indeed, the Commission encourages voluntary partnering of FCC-licensed state or local government entities with Federal entities, finding such partnering is in the public interest for a variety of reasons, including interoperability, public safety responsiveness to safety of life and safety of property crises, and spectrum efficiency.[63] In doing so, the Commission has expressly noted that developments in trunking technology and other technologies that maximize spectrum use have made possible radio systems that can accommodate many users and distinct user groups—each group with its own insulated communications network—on the same system.[64] At the same time, however, the Commission noted that these systems also offer a high level of built-in interoperability between the distinct user groups sharing a radio system.[65] Thus, we find that granting the Waiver Request would make significant strides in Alaska to further the underlying purpose of these rules. In this connection, we also consider that Alaska has developed an Interoperability Plan,[66] and that facilitating Federal and non-Federal interoperability capability and partnerships comports with the Homeland Security objectives of the Commission's Strategic Plan.[67]

14. Section 90.20(c)(3) serves the underlying purpose of promoting efficient use of the spectrum while preventing harmful interference to licensed operations. In particular, Section 90.20(c)(3) designates standard channel centers for public safety radio operations with VHF band channels spaced

[60] See 47 C.F.R. § 1.925(b)(3)(i)-(ii); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C.Cir.1969).

[61] We note that Alaska is only required to satisfy one prong of Section 1.925. Nonetheless, we find that it satisfies both prongs.

[62] Waiver Request at 2.

[63] *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements through the Year 2010, *Second Memorandum Opinion and Order,* WT Docket No. 96-86, 15 FCC Rcd 16844 (2000) (*Second MO&O*).

[64] *Id.* at 16864-65 ¶¶ 42-43.

[65] *Id.*

[66] *See* note 48, *supra.*

[67] *See, e.g.*, note 4, *supra*.

every 7.5 kHz. Waiver of this rule is necessary because the captioned applications request authority to operate on nonstandard (as well as standard) center frequencies spaced every 12.5 kHz within the 154.65-156.24 MHz "sub-band" of the VHF Public Safety Pool. Based on the record before us, we find that granting the Waiver Request will not undermine the purpose of this rule because, in this case, 12.5 kHz spacing facilitates the pairing of non-Federal and Federal spectrum for the spectrally efficient ALMR system, which will use trunked technology and be designed to serve the communications needs of all participating public safety agencies.[68] Furthermore, as discussed in paragraph 15 below, granting the Waiver Request will not increase the potential for harmful interference. In this connection, these same considerations support granting the State's request for waiver of Sections 90.20(d)(16) and 90.20(d)(41) so that these frequencies are available for the statewide trunked system. Given that the limitations on these frequencies are for the benefit of state police agencies or police generally, we also note the support of the Alaska Department of Public Safety.[69]

15. Based on the information before us, we believe that grant of Alaska's request is also consistent with Section 90.20(c)(3) because it will not result in harmful interference to other licensees. First, the Association of Public Safety Communications Officials, Inc. (APCO), an FCC-certified frequency coordinator for the Public Safety Pool, frequency coordinated the captioned applications. These reflect APCO's certification for each frequency and location that Alaska meets the requirements for trunked, exclusive operation within a protected service area (*e.g.,* that Alaska obtained the written consent of all licensees that may be affected by the operations proposed in the captioned applications).[70] For each non-standard channel center requested, the record also includes spread sheets detailing APCO's analysis.[71] Furthermore, Alaska certifies that the three captioned applications meet Section 90.187 and the record includes letters of consent from incumbent licensees.[72] As such, based on the record before us, we conclude that grant of the Waiver Request would not result in interference to incumbent licensees. Moreover, given that each of the proposed channels is bounded on both sides by Public Safety Pool channels, no other service category will be affected.[73] We also note that Alaska encompasses more land area than any other state in the union, including large isolated areas. Taken with the State's geographical separation from the continental United States and the continued availability of other VHF Public Safety Pool frequencies in Alaska, we find that the requested use of the subject frequencies would not frustrate

[68] We also note that the captioned applications propose an authorized bandwidth of 11.25 kHz, which meets the efficiency requirements adopted by the Commission in February 2003 whereby "[n]o new applications for the 150-174 MHz . . . band[] will be acceptable for filing if the applicant utilizes channels with a bandwidth exceeding 11.25 kHz beginning January 13, 2004."). *See* 68 FedReg 42314, July 17, 2003 (47 C.F.R. § 90.209(b)(6) effective Sept. 15, 2003). *See also* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, WT Docket No. 99-87, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 18 FCC Rcd 3034 (2003).

[69] *See* note 44, *supra*.

[70] 47 C.F.R. § 90.187 (defines "affected licensees" and requires written consent).

[71] *See generally,* APCO Reports.

[72] *See* Alaska Response at 3. *See also* Letters of Consent of Alaska Regional Hospital, dated August 27, 2002, Fairbanks North Star Borough Emergency Operations Department, dated August 26, 2002, Municipality of Anchorage, dated August 5, 2002, and Providence Alaska Medical Center, dated August 7, 2002.

[73] *See, e.g.*, FCC File No. 0000696953, Waiver Request at 2. *Accord*, State of Florida, *Memorandum Opinion and Order*, 18 FCC Rcd 3843 (WTB PSPWD 2003) (granted waiver to allow use of non-standard channel centers on channels offset from 800 MHz Public Safety Category channels) (*Florida MO&O*).

Section 90.20(c)(3)'s goal of preventing harmful interference.[74] Furthermore, given that the captioned applications meet the requirements for trunked, exclusive operation within a protected service area, we find that waiver of Section 90.20(c)(3) is justified to permit base operations on frequencies designated for mobile use.

16. Finally, we note that the use of non-standard channel centers raises concerns as to whether Alaska's proposed system would be adequately protected from new applicants. Section 90.187 of the Commission's Rules confers to licensees of exclusive trunked systems a protected service area whereby a new applicant whose interference contour overlaps the service contour of the trunked licensee will only be assigned the same channel as the trunked licensee if the trunked licensee consents.[75] Alaska states that Section "90.187 will sufficiently protect ALMR from new applicants that apply for standard frequencies under the Commission's Rules provided ALMR non-standard frequencies are used for determining frequency separation."[76] In this connection, Alaska notes that its requested frequencies constitute only a portion of the available VHF Public Safety Pool frequencies[77] and that if new users cannot be accommodated in another band, or "if ALMR could not be protected by applying the criteria set forth under [Section] 90.187, [Alaska] believe[s] there to be sufficient spectrum available and unaffected by the off set required to pair non-federal spectrum to federal narrowband spectrum in the other remaining VHF bands."[78] Based on the record before, us, we find that Alaska has satisfied our concerns. Moreover, we also expect that the public safety coordinators will make every attempt to assign other portions of the available VHF Public Safety Pool frequencies in the State of Alaska when processing any future requests for spectrum that are outside of the ALMR system. Given the availability of VHF Public Safety Pool frequencies in the other "subbands" and to minimize the potential for interference, we will require applicants, for new or modified facilities, to satisfy Section 90.187 relative to the nonstandard channel centers authorized to Alaska as well as to the standard channel center that is 2.5 kHz above or below each nonstandard channel.[79]

17. *Unique Circumstances.* We also find that the Waiver Request demonstrates unique circumstances, given Alaska's geographical distance from the lower forty-eight contiguous states, the vastness of the land mass to be covered, together with the state's sparse population.[80] In this connection, we consider Alaska's contention that, in the event of a natural or man-made disaster, in-state resources must provide all first response and recovery operations for up to two weeks until out-of-state help arrives.[81] We also find persuasive Alaska's point that these circumstances highlight the need for radio

[74] The Commission's recognition of Alaska's unique circumstances is by numerous Commission rules that provide special provisions for operations within Alaska. *See, e.g.*, 47 C.F.R. §§ 80.133, 80.469, 80.701, 90.173(g), and 90.253.

[75] 47 C.F.R. § 90.187(b)(2)(v).

[76] *See* Alaska Response at 4.

[77] Alaska states that it seeks to use frequencies in the 154.65-156.24 MHz band, which constitutes only one of three VHF Public Safety Pool sub-bands. *See* 47 C.F.R. § 90.20(c)(3).

[78] Alaska Response at 4.

[79] The captioned applications also request a number of standard channel centers that applicants must protect as required under Section 90.187.

[80] Waiver Request at 11-12.

[81] *Id*. Alaska reports that it would take 7 to 14 days before external assistance is rendered sufficiently to sustain an operation, and Alaska averages one natural disaster emergency situation every 18 months.

communication across jurisdictional lines on a daily basis.[82] Alaska's situation is further unique in that the military plays a defining and critical role in providing support to first responders and sustained recovery operations.[83] These factors demonstrate that Alaska faces unique public safety operational challenges and has unique response needs and procedures. Moreover, we believe Alaska's proposed system provides a unique opportunity to advance the potential for shared federal, state, and local public safety systems in Alaska. In this connection, we note that the ability to pair Federal and non-Federal VHF public safety spectrum in Alaska also represents a unique opportunity to advance public safety radio communication.[84]

18. *Public Interest*. We conclude that granting Alaska's request is in the public interest. Alaska represents that any interested federal, state or local public safety entity will have full access to the ALMR system pursuant to the terms of the MOA.[85] Thus, grant of Alaska's Waiver Request would be in the public interest because it provides for the communications needs of the public safety community. Additionally, we find that Alaska's proposed use of trunking technology on the ALMR system serves the public interest. The Commission has previously determined that permitting trunked operations on shared spectrum would allow licensees to construct systems that are more efficient than conventional systems, thereby allowing licensees to use fewer channels to provide the same communications capability.[86] Thus, the ALMR system will provide users with the opportunity to reap the benefits of increased utilization of radio channels.[87]

19. We further find it significant that the operating authority sought by Alaska will expand and improve the coverage of statewide public safety communications by allowing public safety entities on the state, local and federal levels to communicate with one another with improved efficiency. In this connection, the Commission previously found that a shared statewide trunked system that facilitates federal, state, and local interoperability communications, while also facilitating day-to-day inter-agency communications, demonstrates a sufficient basis for building the system.[88] Thus, we are concerned that

[82] "State, Local and Federal government entities rely more upon mutual assistance from each other than elsewhere in the contiguous 48 states." *Id*. at 12-13.

[83] *Id*. at 13.

[84] Access to Federal frequencies in the 138-144 MHz band (or non-Federal government alternative VHF frequencies, were any available), would allow for upgrading and/or modernization of VHF public safety systems, which would most likely be accomplished by adding frequencies, implementing the repeater mode, or converting to trunked operations. *See, e.g.,* Response to Title XVII, Section 1705 of the National Defense Authorization Act for FY 2001, Alternative Frequencies for Use by Public Safety Systems (Analysis of Non-Federal Government Spectrum submitted by the Chairman, FCC), at 5. The NTIA previously identified three (3) megahertz of spectrum in this band, 139.0-140.5 MHz and 141.5-143 MHz, for reallocation in response to the Balanced Budget Act of 1997. Pub. L. No. 105-33, § 3004, 111 Stat. 251 (1997), codified at 47 U.S.C. § 337(a)(1). However, because the Federal Government continues to have a need for reliable communications between Federal agencies in the 138-144 MHz band, legislation in the "FY 2000 Defense Appropriations Bill" reclaimed that spectrum for Government use. Pub. L. No. 106-65, § 1062(c) (1999).

[85] *See* note 18 and accompanying text, *supra*.

[86] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Second Report and Orde*r, 12 FCC Rcd 14307 (1997).

[87]The ALMR system will use narrowband technologies operating within a 12.5 kHz channel bandwidth or equivalent and capable of providing services in a digital mode. MOA at 2.

[88] *See* State of Wisconsin, 15 FCC Rcd 4312, 4316 ¶ 9 (WTB PSPWD 2000).

denying the Waiver Request could undermine efforts in the public safety community to promote shared systems that foster interoperability and operational flexibility. Equally noteworthy is the fact that public safety entities will be sharing costs and decreasing expenses, a factor that likewise furthers the public interest. In summary, we find that the essential and critical nature of public safety communications and the benefits associated with public safety interoperability weigh in favor of granting a waiver in the instant case. We further find that Alaska has demonstrated that the improved efficiencies in public safety communications associated with the proposed system will allow Alaska to perform its critical public safety responsibilities, such as protection of life and property, more effectively and efficiently, thereby serving the public interest.[89]

20. *Lack of Reasonable Alternatives*. We also find that the record in this proceeding demonstrates that Alaska has no reasonable alternatives within the existing Rules to implement the proposed system. As noted above, Alaska has expended substantial resources considering at least three plans to resolve the communications difficulties that plague public safety officials in the State.[90] Alaska asserts that implementation of the first plan, which called for the creation of two independent trunked systems, would hamper interoperability and increase costs by approximately forty-five million dollars ($45 million).[91] Alaska further states that implementation of the second plan, a dual site system, would result in increased expenditures of over twenty-four million dollars ($24 million), and present other difficulties such as the increased possibility of transmitter noise.[92] Thus, of the three plans considered, Alaska submits that only the proposed ALMR system at issue constitutes a viable solution.[93] We are persuaded that Alaska has made a good faith effort to explore reasonable alternatives and has found none.

21. *Loading.* As discussed above, the ALMR system will utilize approximately ninety (90) frequencies of non-Federal VHF Public Safety Pool spectrum. Pursuant to Section 90.187(e) of the Commission's Rules, an applicant seeking greater than ten (10) channels at a site must demonstrate that each channel will be loaded by a minimum of fifty (50) units within five years.[94] Because Alaska seeks the use of 90 frequencies, its system must therefore be loaded to a minimum of 4500 units. Alaska submits that the ALMR system will support 13,867 subscribers.[95] These anticipated subscribers will consist of 5601 Federal users who will employ 900 mobiles, 4575 portables, and 126 land stations.[96] Additionally, the system will be comprised of 8266 non-Federal users employing 3306 mobiles, 4546 portables, and 414 land stations.[97] Inasmuch as the anticipated number of units in the ALMR system utilizing the requested 90 VHF Public Safety Pool frequencies far exceed the minimum requirement of 4500 units, we find that Alaska's proposed system meets the loading requirements of Section 90.187(c).

[89] *See, e.g.,* notes 26-27 and accompanying text, *supra*.

[90] Waiver Request at 16-18.

[91] *Id* at 17.

[92] *Id.*

[93] *Id*. at 18.

[94] 47 C.F.R. § 90.187(c).

[95] Waiver Request at 19. Alaska states that the system is designed for a probablility of delay of one percent (1%) (for every one hundred times the push to talk button is randomly pressed, one user will receive a busy signal). *See id*. at 18.

[96] Alaska Response at 5.

[97] *Id.*

Given the large amount of spectrum associated with the ALMR system, we will add a condition to the extended implementation schedule whereby channels not loaded to at least fifty (50) units at the end of the extended implementation period cancel automatically.[98]

22. *Extended Implementation*. As noted, the three captioned applications reflect selected sites within Phases 0-2 (2002-2004), and Alaska anticipates filing a total of fifteen applications for the proposed ALMR system, which is to be built in five phases (2002-2006). Generally, licensees of stations operating in the PLMR service are afforded a one-year period in which to place such stations in operation.[99] In this connection, Alaska requests an extended implementation period for construction of the ALMR system.[100]

23. Section 90.155(b) of the Commission's Rules permits governmental entities in the Public Safety Pool to seek extended implementation pursuant to Section 90.629,[101] which in turn allows applicants to be authorized a period of up to five (5) years for constructing and operating a system. The applicant must describe the proposed system, state the amount of time necessary for construction and operation, and identify the number of base stations to be constructed and placed in operation during each year of the extended construction period.[102] Furthermore, the applicant must demonstrate that the proposed system will require more than twelve (12) months to construct because of: 1) the purpose, size or complexity of the proposed system; or 2) the system is to be part of a coordinated or integrated wide area system; or 3) the applicant is required by law to follow a multi year cycle for planning, approving and funding the system.[103] As discussed more fully above, Alaska has provided detailed information on the proposed ALMR system, including a description of the number of mobiles and base station sites,[104] and details of its five-year implementation phases.[105] Furthermore, the record demonstrates that Alaska's proposed system will cater to federal, state and local public safety entities state-wide, and that the proposed ALMR system is sufficiently massive and complex to justify the extended implementation period.[106] Thus, based on the record before us, we find that Alaska has justified the requirements for an extended implementation period. Given that the three captioned applications reflect selected sites within Phases 0-2, and that Alaska anticipates filing a total of fifteen applications over five phases, we clarify that the extended implementation schedule is as set forth in Alaska's Extended Implantation Schedule.[107]

[98] Because this is a statewide system, we will look at loading on a system aggregate basis. Loading will be based on the number of discrete frequencies times 50 units per discrete frequency.

[99] *See* 47 C.F.R. § 90.155(a).

[100] *See* captioned applications, Attachment entitled "Extended Implementation Period" (Extended Implementation Schedule").

[101] 47 C.F.R. § 90.155(b) citing 47 C.F.R. § 90.629.

[102] 47 C.F.R. § 90.629(a).

[103] *Id.*

[104] In addition to the mobile and portable units described in paragraph 21, the ALMR system involves 354 repeaters at 87 sites. *See* note 19 and accompanying text, *supra*.

[105] *See* Extended Implementation Schedule.

[106] Having satisfied the first prong of Section 90.629(a), and notwithstanding the fact that Alaska need not satisfy any additional prongs thereof to qualify for a grant of extended implementation, we also find that Alaska has satisfied the second prong of Section 90.629(a) because the ALMR system is a coordinated and integrated wide area system.

[107] Alaska set forth the following estimated schedule: Phase 0 in 2002, Phase 1 in 2003, Phase 2 in 2004, Phase 3 in 2005, and Phase 4 in 2006. *See* Extended Implementation Schedule.

As noted in paragraph 21 above, any discrete frequencies not loaded to at least fifty (50) units at the end of the extended implementation period cancel automatically. For administrative convenience, December 31st will be the operative date for each yearly benchmark, with December 31, 2006 being the end of the extended implementation period.[108]

24. Authorizations granted under extended implementation are conditioned upon the licensee constructing and placing its system in operation within the authorized implementation period and in accordance with an approved implementation plan of up to five years. Licensees must notify the Commission annually using Form 601, that they are in compliance with their yearly station construction commitments, but licensees may request amendment to these commitments at the time they file their annual certification.[109]

25. *Sections 90.179, 90.421*. Alaska notes that it will be sharing the ALMR facilities with other Public Safety Pool eligibles and federal entities on a non-profit, cost shared basis pursuant to Section 90.179 of the Commission's Rules.[110] Alaska also envisions sharing the use of the radio facilities with non-Public Safety Pool eligibles, such as utilities, "but only to promote response and interoperability during incident or emergency response."[111] Section 90.179 generally does not authorize public safety licensees to share facilities operating on Public Safety Pool spectrum with entities (other than federal entities) that are ineligible to be licensed on such spectrum.[112] In this connection, Alaska states that the Council (which also serves as the State Interoperability Executive Committee)[113] "will administer and manage these requirements and will certify and justify this type of sharing with the Commission as stipulated in the State's Interoperability Plan."[114] Because the Commission generally does not review interoperability plans, we clarify that in the event that Alaska seeks to enter an agreement, as described in Section 90.179, to share the use of ALMR facilities with an ineligible entity, Alaska must request a waiver of Section 90.179.[115] We also note that Section 90.421 of the Commission's Rules[116] authorizes the operation of mobiles and portables, under certain circumstances, by persons other than the licensee

[108] By way of clarification, our adjustment to the extended implementation schedule is not intended to modify the terms of the MOA, July 2003 MOA, or any other agreements related to construction and operation of the ALMR system.

[109] *See* 47 C.F.R. § 90.629(c).

[110] *See* Alaska Response at 6 *citing* 47 C.F.R. § 90.179.

[111] *See* Alaska Response at 6. Alaska states that the Council (which also serves as the State Interoperability Executive Committee), *see* Interoperability Plan at 13, "will administer and manage these requirements and will certify and justify this type of sharing with the Commission as stipulated in the State's Interoperability Plan." Alaska Response at 6.

[112] *See* 47 C.F.R. § 90.179(a)(g).

[113] *See* Interoperability Plan at 13.

[114] Alaska Response at 6.

[115] Such request should include specific details as to the parties and authorizations involved. *See, e.g.,* Commonwealth of Pennsylvania and GPU Energy, *Order*, 14 FCC Rcd 14,029, 14,036 ¶ 13 (granted waiver of Section 90.179 to allow integrated, statewide system comprised of 800 MHz band Public Safety and Industrial/Land Transportation frequencies, but required separate waivers for additional utilities to contribute spectrum and join the system "to aid in monitoring the system's spectrum mix, and accord[] with Commission precedent").

[116] 47 C.F.R. § 90.421.

because these provisions may provide sufficient authority relative to the need to communicate with utilities *etc.* for response and interoperability during incident or emergency response.[117]

26. *Conditions of Grant.* As we noted previously, Alaska certifies that it has complied with Section 90.187(b) in that it has fulfilled all frequency coordination requirements, and has obtained the written consent of all licensees.[118] Nonetheless, out of an abundance of caution to incumbent licensees, we grant Alaska's Waiver Request subject to the condition that Alaska must pay to relocate any "affected licensees,"[119] who were not identified by the frequency coordination process, that have not consented to Alaska's request for the relevant frequencies.[120] Alternatively, Alaska may resolve any such post-licensing issue by modifying the ALMR system.[121] Furthermore, we note that the July 2003 MOA includes provisions for revocation or termination of frequencies by either the DoD or Alaska.[122] Thus, our grant of the Waiver Request is conditional for the duration of the July 2003 MOA or any successive MOA between the parties. Termination of the July 2003 MOA or successive MOA may be grounds for canceling and/or modifying the station licenses granted under this waiver. Moreover, upon any revocation or termination of frequencies under the MOA, Alaska must notify the Commission in writing of any changes within 30 days and file for license modifications, if appropriate.[123] Our grant is also

[117] *See* 47 C.F.R. § 90.421(a)(c). In this connection, we note that Appendices C and D of the Interoperability Plan are sharing agreements between Alaska and the HQ Alaskan Command/J6 that reference, *inter alia*, Section 90.421.

[118] *See* para. 15 *supra.*

[119] Alaska noted that the frequency plan "facilitates a graceful migration and also permits users who are not migrating to the state-wide system to relocate at the State's expense to one of the three remaining sub-bands where the State has vacated." Waiver Request at 23.

[120] From time-to-time, we receive complaints filed by incumbent licensees claiming to be "affected licensees" under Section 90.187 that did not consent to license granted to a co-or-adjacent channel exclusive trunked system. Overall, these complaints represent a very small percentage of all such grants. However, a significant number of these complaints are found to have merit. We recognize that virtually all of these complaints occur relative to Industrial/Business Pool applications and licenses. Moreover, we do not mean to imply any lack of confidence as to the frequency coordinations performed herein. Nonetheless, our experience relative to Industrial/Business Pool applications, taken with the magnitude of spectrum associated with the captioned applications, counsels a cautious approach to protecting the rights of any incumbent, "affected licensees" that, despite all good faith efforts, are identified only after our grants of the captioned applications become final.

[121] See para. 15, *supra*. Alaska notes that its requested frequencies constitute only a portion of the available VHF Public Safety Pool frequencies and that if new users cannot be accommodated in another band, or "if ALMR could not be protected by applying the criteria set forth under [Section] 90.187, [Alaska] believe[s] there to be sufficient spectrum available and unaffected by the off set required to pair non-federal spectrum to federal narrowband spectrum in the other remaining VHF bands."

[122] The July 2003 MOA provides that: (1) the NTIA or DOD may revoke authority for use of the 138-144 MHz frequencies being used on any part of the ALMR if there is no longer substantial benefit to the Government, or if higher priority requirements develop for the DOD or other Government entities; (2) the FCC or Alaska may revoke authority for use of the 154.56-156.24 MHz frequencies being used on any part of the ALMR if there is no longer substantial benefit to State and local government, or if higher State government priority requirements develop for state government entities. " Such revocation of spectrum resources associated with public safety will be allotted no less than 6 months notice and a period of no longer than 1 year from the time of notice will be given to cease operation . . . ." July 2003 MOA at 6-7.

[123] We clarify that the Commission is neither bound by, nor a party to, the MOA or July 2003 MOA, *etc.* Nonetheless, absent any Commission rule, policy or order, to the contrary, revocation and termination would be governed by the July 2003 MOA.

subject to the condition that Alaska meets its extended implementation schedule; as noted, channels not loaded to at least fifty (50) units within the extended implementation period cancel automatically without specific Commission action.[124] In addition, given that the ALMR system will involve approximately fifteen applications in total, we clarify that the instant grant of the Waiver Request is based on the record developed in this proceeding, which is limited to the three captioned applications. Thus, the balance of the applications for the ALMR system must also request waivers of the Commission's Rules, as necessary. We will look favorably, however, on future applications from Alaska requiring a waiver if the applications are accompanied by a signed statement certifying that the stations are (1) part of the ALMR statewide system described herein, (2) in compliance with this *Memorandum Opinion and Order* and (3) in compliance with the July 2003 MOA or successive MOA.[125]

IV. CONCLUSION

27. For the reasons stated herein, we conclude that grant of Alaska's Waiver Request is warranted and furthers the public interest. We agree with Alaska that the proposed ALMR system is consistent with the Commission's policy goals of attaining spectrum efficiency and interoperability, and the larger public interest goals of public safety, homeland security, and governmental cost-efficiency.[126] We, therefore, conditionally grant Alaska's Waiver Request as indicated herein to permit it to construct and operate the ALMR system using the standard and non-standard channels it seeks in the three captioned applications.

V. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver associated with each of the captioned applications filed by the State of Alaska, on September 23 and September 25, 2002, **IS CONDITIONALLY GRANTED** to the extent indicated herein.

29. **IT IS FURTHER ORDERED** that the captioned applications, FCC File Nos. 0001036496, 0001036497, and 0001039631, **SHALL BE REFERRED** to the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for processing consistent with the Commission's Rules and this *Memorandum Opinion and Order*.

30. **IT IS FURTHER ORDERED** that the Commission certified frequency coordinators for the Part 90 Public Safety Pool **SHALL** frequency coordinate applications for VHF Public Safety Pool frequencies in Alaska in accordance with paragraph 16 of the instant *Memorandum Opinion and Order*.

31. **IT IS FURTHER ORDERED** that the instant *Memorandum Opinion and Order*, or a summary thereof, **SHALL BE PUBLISHED** in the Notice section of the Federal Register.

[124] *See generally* 47 C.F.R. §§ 1.946(c) (Termination of authorizations) & 1.946(d) (Licensee notification of compliance).

[125] All such applications will be sent to IRAC for coordination.

[126] April 2003 Letter at 3.

32. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta
Chief, Wireless Telecommunications Bureau